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No. 88-317

IN THE

Supreme Court of the United States

October Term, 1988

JACK R. DUCKWORTH, *Petitioner*,

v.

GARY JAMES EAGAN, *Respondent*,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONERS

Linley E. Pearson
Attorney General of Indiana

Robert S. Spear
Chief Counsel

Michael A. Schoening
Deputy Attorney General

Office of Attorney General
219 State House
Indianapolis, Indiana 46204
(317) 232-6333

Attorneys for Petitioner

Central Publishing Company, Inc., Indianapolis, IN 46206

QUESTIONS PRESENTED FOR REVIEW

Whether the Seventh Circuit's formalistic and hyper-technical application of *Miranda*, prohibiting the use of objectionable "magic words" in an advice of rights, is in conflict with the decisions of this Court and a majority of Circuits which have determined this issue.

Whether the Seventh Circuit's determination that an incriminating statement, following a constitutionally adequate *Miranda* warning, was tainted and inadmissible by reason of the first advice of rights, is in conflict with the decisions of this Court and a majority of Circuits which have determined this issue.

LIST OF PARTIES

The parties to this proceeding are Petitioner Jack R. Duckworth, Superintendent, Indiana State Prison, Michigan City, Indiana and Respondent, Gary James Eagan.

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BRIEF FOR PETITIONERS

Petitioner, Jack R. Duckworth, respectfully prays the Court to reverse the judgment of the United States Court of Appeals for the Seventh Circuit (hereafter the "Seventh Circuit" which reversed and remanded this cause to the United States District Court for the Northern District of Indiana, South Bend Division (hereafter the "District Court").

OPINIONS BELOW

The decision of the Seventh Circuit denying Petitioner's request for Rehearing in Banc issued on May 24, 1988. (J.A.1) The decision of the Seventh Circuit reversing and remanding this cause to the District Court issued on March 23, 1988. *Eagan v. Duckworth*, 843 F.2d 1554 (7th Cir. 1988). (J.A.3) The decision of the District Court was entered on June 26, 1986. (J.A.49)

JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254 and Rule 17 of this Court. The decision of the Seventh Circuit was entered on March 22, 1988. This decision was reviewed on May 24, 1988, when the Seventh Circuit denied Petitioner's Petition for Rehearing in Banc. A Petition for Writ of Certiorari was timely filed in that it was filed on August 22, 1988, prior to the expiration of the ninety (90) day period allowed by 28 U.S.C. § 2101(c) and Rules 20.2, Rules of the Supreme Court of the United States, as measured from the issuance of the denial of Petitioner's Petition for Rehearing in Banc as provided by Rules 20.4, Rules of the Supreme Court of the United States. The Petition for Writ of Certiorari was granted on October 11, 1988 and this brief is timely filed in that it is filed prior to the due date set by the Clerk of the Court pursuant to Petitioner's request for extension of time allowed by Rule 35.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Fifth Amendment to the Constitution of the United States provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; *nor shall be compelled in any criminal case to be a witness against himself*, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

(emphasis added.)

28 U.S.C. § 2241(c) provides in pertinent part:

> (c) The writ of habeas corpus shall not extend to a prisoner unless --

> (3) he is in custody in violation of the Constitution or laws or treaties of the United States; or . . .

28 U.S.C. § 2254(d) provides in pertinent part:

> (d) In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct . . .

STATEMENT OF THE CASE

A. Nature Of The Case

The Respondent, Gary James Eagan, (hereafter "Eagan") is currently incarcerated at the Indiana State Prison, Michigan City, Indiana, and has been so incarcerated at all times while this matter was before the Courts. Eagan filed a petition for writ of habeas corpus in District Court pursuant to 28 U.S.C. § 2254. There were two primary issues raised in Eagan's petition. First, whether his right to be free of self-incrimination was impinged upon. Second, whether he was denied due process by the Court's failure to fully instruct the jury.

Eagan complained that his two statements to the police which were admitted at trial were obtained in a constitutionally infirm manner. Specifically, Eagan contends the advice of rights on the waivers was inadequate and misleading. Only this issue is raised in this petition, as the Circuit Court's decision to reverse and remand rested on this issue alone.

B. Course Of Proceedings

On December 7, 1982, Eagan was convicted, by a jury, of attempted murder and sentenced to a term of imprisonment of thirty-five (35) years. This conviction was upheld by the Supreme Court of Indiana in a decision entered August 2, 1985. *Eagan v. State*, 480 N.E.2d 946 (Ind. 1985). (J.A.-82) Eagan

filed his petition for writ of habeas corpus with the District Court on February 3, 1986. A Return to Order to Show Cause was filed by Petitioner on March 6, 1986. Eagan's petition was denied by Order of the District Court on June 26, 1986.

A Notice of Appeal was filed by Eagan, and on July 14, 1986, the District Court issued a Certificate of Probable Cause. A motion for appointment of counsel was filed by Eagan and counsel appointed by Order of the Circuit Court on December 17, 1986. Eagan's Court-Appointed Counsel filed his brief on or about February 19, 1986. Petitioner's brief was filed on March 30, 1987. On June 2, 1987, oral argument was held.

The Circuit Court's decision reversing and remanding the decision of the District Court was entered March 22, 1988. Petitioner moved for a Rehearing in Banc on April 1, 1988. Eagan's response to the motion for rehearing in Banc was filed on or about April 19, 1988. On May 24, 1988, the Circuit Court entered the Order denying Petitioner's motion for Rehearing in Banc. On August 22, 1988, Petitioner timely filed his Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit, which was granted by this Court on October 11, 1988. The appeal results.

C. Facts

On May 16, 1982, Eagan telephoned the Chicago police and talked to an officer with whom he was acquainted. The officer met Eagan at his apartment and Eagan told him that he had found a naked dead woman along the shore of Lake Michigan in Indiana. Eagan led the police to the area where the body was found.

Upon approaching the victim it was apparent she was not dead. The victim, seeing Eagan, exclaimed: "Why did you stab me?" At trial the victim stated she was picked up by Eagan and some companions in South Chicago, Illinois and taken to the beach area where she had sexual relations with several of the men. Later, the victim refused to have sex with Eagan, who then stabbed her nine times and left her lying naked in the wooded area near the lake.

As the incident occurred in Indiana the matter was turned over to the Hammond Police Department (Indiana) and at approximately 11:14 a.m. on May 17, 1982, Eagan was questioned by them as a witness. Eagan was read aloud and then asked to read and sign the following advice of rights and waiver form prior to the questioning:

"VOLUNTARY APPEARANCE;
ADVICE OF RIGHTS
YOUR RIGHTS

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court. If you wish to answer questions now without a lawyer present, you have the right to stop answering questions at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER

I, [Gary Eagan] have come to the Detective Bureau of the Hammond, Indiana Police Department, of my own choice to talk with Officers of the Hammond, Indiana Police Department, In [sic] regard to an investigation they are conducting. I know that I am not under arrest and that I can leave this office if I wish to do so.

Prior to any questioning, I was furnished the above statement of my rights at [11:14 a.m.] on [5-17-82] at [H.P.D.] by (time) (date) (place) [ROGER RASKOSKY & THOMAS BAUGHMAN] of the Hammond Police Department. I have (read) (had read to me) this statement of my rights. I understand what my rights are. I am willing to answer questions and make a statement. I do not want a lawyer. I understand and know what I am doing. No promises or threats have been

made to me and no pressure of any kind has been used against me.

Signed [Gary J. Eagan]

[11:16 a.m. 5/17/82 H.P.D.]
(time) (date) (place)

Witness [Sgt. Roger A. Raskosky]

Witness _____

Okey [sic] to take your photo: [Gary Eagan]

Date _____ Time _____" (J.A. 132)

Following this advice of rights, Eagan gave the police an exculpatory statement consistent with the original story Eagan told the Chicago Police the night before.

Eagan remained in police custody and was questioned again twenty-nine (29) hours later at 4:21 p.m. on May 18, 1982. He was orally advised of and asked to read and sign the following advice of rights and waiver.

"WAIVER AND STATEMENT
HAMMOND POLICE DEPARTMENT

CASE # [82-14893]

DATE [5-18-82] PLACE [H.P.] TIME STARTED [4:21 P.M.]

I, [Gary Eagan], AM [22] years old. My date of birth is [5-23-59], I live at [13302 BALTIMORE AVENUE]. This person to whom I give the following voluntary statement, [SGT. RASKOSKY] [BAUGHMAN], having identified and made himself known as a [DETECTIVES] of the Hammond Indiana Police Department, DULY WARNED AND ADVISED ME, AND I KNOW:

1. Before making this statement, I was advised that I have the right to remain silent and that anything I might say may or will be used against me in a court of law.

2. That I have the right to consult with an attorney of my own choice before saying anything, and that an attorney may be present while I am making any statement or throughout

the course of any conversation with any police officer if I so choose.

3. That I can stop and request an attorney at any time during the course of the taking of any statements or during the course of any such conversation.

4. That in the course of any conversation I can refuse to answer any further questions and remain silent, thereby terminating the conversation.

5. That if I cannot hire an attorney, one will be provided for me.

WAIVER

I have read the foregoing statement of my rights and I am fully aware of the said rights. I do not desire the services of any attorney at this time and before proceeding with the making of any statement or during the course of any conversation with any police officers, and hereby waive said right. No promises or threats have been used against me to procure any statement or induce any conversation. That the statement I am about to give is the truth and that I give it of my own free will.

(Signed) [Gary J. Eagan]

TIME [4:23 p.m.] DATE [5-18-82]

I have read each page of this statement and waiver, consisting of [2] pages, each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at [5:25 PM], on the [18] day of [May], 19[82].

(Signed) [Gary J. Eagan]

CERTIFICATION

I hereby certify that the foregoing warning and waiver was explained and read by me to the above signatory, and that he also read it and has affixed his signature hereto in my presence, and that I will so testify in court. (J.A. 143-144)

[Sgt. Roger A. Raskosky]"

Eagan then gave the police an inculpatory statement. The following day, May 19, 1988, Eagan led the police to the scene of the crime and directed the police to the location of the weapon, a knife, and the victim's clothing, which was promptly recovered. Prior to trial Eagan filed a motion to suppress the evidence obtained on May 17, 18 and 19. A hearing was conducted and Eagan's motion was denied. (J.A. 95)At trial, both Eagan's statements and the clothing and weapon were admitted into evidence over his objection.

SUMMARY OF THE ARGUMENT

The Seventh Circuit has determined that certain language contained in the waiver of rights at issue is a *per se* violation of *Miranda*. In essence, the decision of the Seventh Circuit is contrary to the spirit and the letter of the law set out in *Miranda* which specifically counsels against any requirement of "magic words" to satisfy *Miranda*. Further, the position taken by the Seventh Circuit on the specific language complained of is contrary to the majority of circuits which have reviewed this language.

I. THE SEVENTH CIRCUIT'S DETERMINATION THAT EAGAN'S CONFESSIONS WERE NOT KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY GIVEN IS IN CONFLICT WITH DETERMINATIONS OF THE U.S. SUPREME COURT AND A MAJORITY OF THE CIRCUIT COURTS ON THIS ISSUE

Respondent's position on this issue can be stated no better than was done by Judge Coffey in his dissent to the majority decision in this cause.

> After researching and reviewing our colleague's decisions, it is clear that defendants' purely semantical and hyper-technical challenges to the sufficiency of a particular *Miranda* warning have been convincingly rejected by the Fifth, Second, Fourth, Eighth, Tenth and Eleventh Circuits.

* * *

> Today, the majority rejects and disregards the great weight of authority, leaving our circuit standing alone and thus in conflict with the vast majority of other circuits, and instead resurrects *Twomey's* "overly technical application of the *Miranda* rule". *Id.* at 1253 (Pell, J., dissenting). In so doing, the majority commits a regrettable mistake. (J.A. 27-28)

The Seventh Circuit determined the decisions of the state court and District Court, that Eagan's statements were knowingly and voluntarily given, were in error. The majority of the Seventh Circuit determined the first statement was inadmissible because the first warning was constitutionally defective. Specifically, the Seventh Circuit found the following language in the first warning constitutionally defective:

> "You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. *We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court.*" (J.A. 5)

According to the Seventh Circuit this language is ambiguous and misleading and presumptively invalid in view of the holding in *United States ex rel. Williams v. Twomey*, 467 F.2d 1248 (7th Cir. 1972). The majority went on to conclude the first defective warning possibly tainted the second, rendering the subsequent confession and evidence obtained thereby fruit of the poisonous tree and equally inadmissible.

The decision of the Seventh Circuit is in error for three reasons. First, the decision ignores the current trend of decisions of the Supreme Court in this area of law. Second, the decision is inconsistent with the reasoning employed by the Seventh Circuit in other decisions of this issue. Finally, this decision contradicts the decisions of a majority of the other Circuit Courts.

The recent decisions of this court discussing Miranda[1] dis-

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[1] *Colorado v. Connelly*, 479 U.S. 157 S.Ct. 515, 93 L.Ed.2d 473 (1987); *Colorado v. Spring*, 479 U.S. 564, 107 S.Ct. 851, 93 L.Ed.2d 954 (1987); *Connecticut v. Barnett*, 479 U.S. 523, 107 S.Ct. 828, 93 L.Ed.2d 920 (1987).

play a noticeable trend away from overly simplistic reliance upon the use of "magic words" to inform a defendant of his rights. This Court has recently re-emphasized the principle that the totality of the circumstances must be reviewed in determining the validity of any particular confession. In *Connecticut v. Barret*, 479 U.S. 523, 107 S.Ct. 828, 832 (1987), the Court stated:

> "Nothing in our decisions, however, or in the rationale of Miranda, require authorities to ignore the *tenor* or *sense* of a defendant's response to these warnings." (emphasis added).

In *Twomey*, the Seventh Circuit discussed no other facts beyond that of the language of the advice of rights alone. *Twomey* establishes in effect a set of "magic words" presumptively invalid in all cases or situations. The Seventh Circuit while discussing the "totality of the circumstances" standard has nonetheless applied a "per se violation" approach resting upon the use of specific "magic words" the Seventh Circuit has found objectionable.

> Although over fifteen years have passed since this court rendered *Twomey*, it remains the "seminal case in this circuit dealing with the issue of ambiguously worded *Miranda* warnings," *Emler v. Duckworth*, 549 F.Supp. 379, 381 (N.D. Indiana, 1982). We see no reason to stray from its teachings now. The "internal inconsistent[cies]", *United States ex rel. Placek v. State of Illinois*, 546 F.2d 1298, 1300 (7th Cir. 1976), inherent in this type of warning are no less ambiguous and misleading today than they were fifteen years ago. (J.A. 7-8)

The Seventh Circuit's objection to the language of the advice of rights in this case is also incompatible with other recent decisions of the Seventh Circuit and a majority of the other circuits which have addressed the issue. In *Richardson v. Duckworth*, 834 F.2d 1366 (7th Cir. 1987) the Circuit Court stated, rightly so, with respect to the formulation of the Miranda warning itself, the Supreme Court has . . . adopted a flexible analysis, "and has never mandated that law, enforcement officers use certain 'magic words' to inform a defendant of his rights." *Id.* at 1370. In *United States v. Johnson*, 426 F.2d 1112 at 1115-1116, (7th Cir. 1970) *cert. denied* 400 U.S. 842 (1970) the Court held:

> "Harry Johnson was told that a lawyer would be appointed '*if and when you go to court*' and claims this did not fully advise him of his right to have an attorney present during the custodial interrogation. However, he signed a statement which, *read as a whole, complied with the Miranda requirements*. Having signed the written waiver form, without evidence to the contrary, he cannot now contend that he did not understand his rights. *See, Bell v. United States*, 382 F.2d 985, 987 (9th Cir. 1969), *cert. denied*, 390 U.S. 965, 88 S.Ct. 1070, 19 L.Ed.2d 1165 (1968). (emphasis added)

Nonetheless, in this case the Seventh Circuit reaffirmed its decision in *United States ex rel. Williams v. Twomey*, 467 F.2d 1248 (7th Cir. 1972) applying *Twomey's* unrealistic and hypertechnical application of Miranda, objecting to the same language approved in *Johnson*, *supra*.

Such a formalistic application of Miranda has been rejected by a majority of the Circuits addressing the issue. The Second Circuit reviewed language similar to that contained in the advice of rights rejected by the Seventh Circuit in this cause in *Massimo v. United States*, 463 F.2d 1171 at 1173 (2nd Cir. 1972), *cert. denied*, 409 U.S. 1117 (1973):

> (c) You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.
>
> (d) You have the same right to the advice and presence of a lawyer even if you cannot afford to hire one. *We have no way of furnishing you a lawyer but one will be appointed for you, if you wish, if and when you go to court.* (emphasis in original)

The Second Circuit found this language constitutionally sufficient in view of the advice of rights as a whole. The Fourth

Circuit reviewed language indistinguisable in content in *Wright v. North Carolina*, 483 F.2d 405, 410 (4th Cir. 1973), *cert. denied*, 413 U.S. 936 (1974) and also found it constitutionally adequate:

> You have the right to talk to a lawyer for advice before we ask you any questions, and to have him with you during questioning. You have this right to advice and presence of a lawyer even if you cannot afford to hire one. *We have no way of giving you a lawyer, but one will be appointed for you if you wish, if and when you go to Court.* (emphasis added)

In *United States v. Lacy*, 446 F.2d 511 at 512-513 (5th Cir. 1971) the Fifth Circuit also reviewed similar language and held it to be a constitutionally sufficient advice of rights:

> You have the right to talk to a lawyer for advice *before* we ask you any questions, and to have him with you during the questioning. You have this right to the advice and *presence* of a lawyer, even if you cannot afford to hire one. *We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court.* (emphasis in original)

So, too, the Eighth Circuit has reviewed and upheld similar language to that objected to by the Seventh Circuit:

> You can stop the questioning anytime. It means that you have the right to have an attorney present with you at this time; and it means that if you do say anything, that it can be used against you later; and *that you do have the right to have an attorney appointed by the Court for you if you are later charged with a Federal offense.* (emphasis in original)

Klingler v. United States, 409 F.2d 299, 308 (8th Cir. 1969), *cert. denied* 396 U.S. 899 (1969).

The Tenth Circuit in *Coyote v. United States*, 380 F.2d 305 (10th Cir. 1967) *cert. denied*, 389 U.S. 992 (1967), addressed this issue and concluded quite accurately:

> "Surely Miranda is not a ritual of words to be recited by rote according to didactic niceties. What Miranda does require is meaningful advice to the unlettered and unlearned in language which he can comprehend and on which he can knowingly act. *We will not indulge semantical debates between counsel over the particular words used to inform an individual of his rights. The crucial test is whether the words in the contest used*, considering the age, background and intelligence of the individual being interrogated, *impart a clear, understandable warning of all of his rights." Id.* at 308. (emphasis added)

The Eleventh Circuit has also rejected the position taken by the Seventh Circuit in *United States v. Contreras*, 667 F.2d 976, 978 (11th Cir. 1982), *cert. denied* 459 U.S. 849 (1982), reviewing the following language:

> "You have the right to consult your attorney before making any statement or answering any question, and you can have your attorney present while we interrogate you.
>
> If you want an attorney but cannot pay for one on your own, the United States Magistrate in this city or in the Federal Court will assign you an attorney free of charge."

Thus, as Judge Coffey so aptly stated in his dissent to the majority's decision in this cause:

> [A]fter researching and reviewing our colleagues' decisions, it is clear that Defendants' purely semantical and hyper-technical challenges to the sufficiency of a particular *Miranda* warning have been convincingly rejected by the Fifth, Second, Fourth, Eighth, Tenth and Eleventh Circuits. (J.A. 27)

The great weight of authority on this issue would therefore militate in favor of upholding the admissibility ~~of the~~ first statement given by Eagan. If the Seventh Circuit's anachronstic approach to the first statement were not bad enough, the error is compounded by their conclusion the second advice of rights was possibly tainted by the first requiring an evidentiary hearing into the admissibility of the second statement.

II. THE SEVENTH CIRCUIT ERRED IN DETERMINING THAT EAGAN'S SECOND STATEMENT WAS TAINTED BY AN INADEQUATE ADVISEMENT OF RIGHTS PRIOR TO HIS FIRST STATEMENT

The second advice of rights read out loud to Eagan, than read and signed by him, contains no constitutionally objectionable language, even by Seventh Circuit standards. However, the Seventh Circuit held:

> As a result of the first warning, Eagan arguable believed that he could not secure a lawyer during interrogation. The second warning did not explicitly correct this misinformation. (J.A. 9).

Even assuming *arguendo* the first statement of Eagan was the product of a constitutionally infirm advice of rights, a point not conceded by Petitioner, the Seventh Circuit has ignored the proper standard to be applied to such circumstances. When the totality of the circumstances are reviewed it becomes obvious the second statement is admissible regardless of the Seventh Circuit's determination as to the admissibility of the first statement.

The applicable standard was most recently set out in *Oregon v. Elstad*, 470 U.S. 298 at 318 (1985):

> "Far from establishing a rigid rule, we direct courts to avoid one; there is no warrant for presuming coercive effect where the suspect's initial inculpatory statement, thought technically in violation of *Miranda*, was voluntary. *The relevant inquiry is whether, in fact, the second statement was also voluntarily made.*" (emphasis added)

The findings of state courts as to the voluntariness of confessions are entitled to a presumption of correctness pursuant to 28 U.S.C. § 2254(d); *Perri v. Director, Department of Correction of Illinois*, 817 F.2d 448 (7th Cir. 1987). This is true even where no express finding is made by the state court so long as such a finding is "implicit in a state court's opinion." *Bryan v. Warden, Indiana State Reformatory*, 820 F.2d 217 (7th Cir. 1987).

The Seventh Circuit, out of hand, observes "of course, we know very little about the factual circumstances surrounding those events [leading to Eagan's second statement] because the state courts did not directly examine the issue" (J.A. 9). This observation is quite simply incorrect. The record of the November 19, 1982, pre-trial suppression hearing, submitted as a supplement to the record at the Circuit Court's request, contains a thorough discussion of the factual circumstance surrounding the second statement. At the suppression hearing there was ample testimony by Officer Raskosky and Baughman, Eagan's interrogators, as to Eagan's behavior and physical appearance, the advice of rights, Eagan's responses and his conduct during questioning. The passage of twenty-nine hours between statements was also established. Eagan also testified as to his perception of the events. After hearing the above described testimony, the state trial judge denied Eagan's motion to suppress as to both statements. Implicit in this denial of the motion to suppress was the necessary finding that Eagan had voluntarily and knowingly waived his Miranda rights at both opportunities. The trial court's determination was upheld on appeal and again by the District Court in denying Eagan's petition for writ of habeas corpus.

Given this set of facts, the Seventh Circuit was under an obligation to refrain from substituting "its own judgment as to the credibility of witnesses' for that of the state courts", *Richardson v. Duckworth*, 834 F.2d 1366, at 1372 (7th Cir. 1987). A careful review of the record with an eye toward the "totality of the circumstances" can render only one conclusion, that Eagan voluntarily and knowingly waived his rights at the time of the second statement. The second inculpatory statement at the very least was admissible, as was the physical evidence obtained therefrom. The Seventh Circuit's mandate reversing and remanding this case for further evidentiary inquiry is unnecessary and an inefficient exercise of judicial resources.

CONCLUSION

The Seventh Circuit erred in determining the first, exculpatory, statement given by Eagan was the product of a constitutionally inadequate advice of rights. Their determination is in conflict with a majority of Circuit Courts which have reviewed the issue as well as the current standards of the United States Supreme Court. Further, the Seventh Circuit's decision that Eagan's second, inculpatory, statement was tainted by the first allegedly inadequate warning of rights is in conflict with the recent decisions of the Supreme Court. Wherefore, Petitioner respectfully prays the Court reverse the decision of the United States Court of Appeals for the Seventh Circuit, and reinstate the judgment of the United States District Court for the Northern District of Indiana, South Bend Division.

Respectfully submitted,

Linley E. Pearson
Attorney General of Indiana

Robert S. Spear
Chief Counsel

Michael A. Schoening
Deputy Attorney General

Attorneys for Petitioner